

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

LELAND FOSTER,

Plaintiff,

v.

**SOUTH WILLOWBROOK ASSOCIATES,
LLC.,**

Defendant.

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Case No. 1:18-cv-00087PJG

Judge: Phillip J. Green

CONSENT DECREE AND ORDER

WHEREAS, Plaintiff Leland Foster ("Foster") filed this action against **South Willowbrook Associates, LLC.**, in the United States District Court for the Western District of Michigan, Case Number 1:18-cv-00087PJG.

WHEREAS, Foster alleged violations of Title III of the Americans with Disabilities Act, 42 U.S.C. § 12181, et seq. ("Title III" of the "ADA") and Michigan Persons with Disabilities Civil Rights Act, M.C.L. § 37.1301 at a shopping plaza located at E. Chicago St., Coldwater, MI 49036 (the "Property");

WHEREAS, the Parties desire to resolve this matter, without further formal proceedings and have voluntarily entered into this Consent Decree.

NOW, THEREFORE, in consideration of the promises and mutual covenants set forth in this Decree and Order, the parties request the Court to enter consent judgment accordingly.

A. Undertakings by Defendant South Willowbrook Associates, LLC.:

Without an admitting liability or culpability, in response to and in settlement of the allegations contained in Foster's Complaint and all other allegations brought or which could have

been brought in this action with respect to this Property, South Willowbrook Associates, LLC. agrees to perform the following barrier removal, alterations, and modifications at and to the Property, *Foster and South Willowbrook Associates, LLC agree the following alterations have already been completed*; or, to the extent not already completed, South Willowbrook Associates, LLC agrees to perform the following barrier removal, alterations, and modifications at and to the Property, within one year following the Court's entry of this Consent Decree, subject to a reasonable extension due to force majeure, or events beyond the control of South Willowbrook Associates, LLC. such as inability to obtain building or zoning permits, failure of the city/county inspectors to make inspections, contractor defaults, or work stoppages:

Parking and Accessible Routes

1. South Willowbrook Associates, LLC. will confirm the parking facility meets the required number of accessible parking spaces, including the required minimum number of van accessible parking spaces, dispersed evenly throughout the shopping center in accordance with Table 208.2 of the 2010 Standards.
2. Individual mobility accessible parking spaces shall be marked with signage that includes the International Symbol of Accessibility mounted no less than 60" above the ground surface measured to the bottom of the sign. Signs identifying van parking spaces shall contain the designation "van accessible" in compliance with Section 502.6 of the 2010 Standards.
3. South Willowbrook Associates, LLC. will restripe designated accessible parking to create an access aisle serving each individual designated accessible parking space in compliance with Section 502.3 of the 2010 Standards.
4. South Willowbrook Associates, LLC. will install a compliant curb ramp or curb cut connecting designated accessible parking to the retail entrances in compliance with Section 406 of the 2010 Standards. Built-up curb ramps are permitted, but they cannot project in parking spaces, access aisles, or vehicle traffic lanes. Handrails are required on both sides of ramps with a rise greater than 6".
5. South Willowbrook Associates, LLC. will repave or otherwise correct the cracks and changes in level along the accessible route in excess of ¼ inch.
6. South Willowbrook Associates, LLC. may at its discretion remove the existing non-compliant ramps and install alternate compliant curb ramps. The existing

built up curb ramps may remain provided they are also modified to meet accessibility requirements (See #4).

7. South Willowbrook Associates, LLC. will repave or otherwise correct slopes on the accessible route in excess of 1:20 in compliance with the 2010 Standards.

Miscellaneous

8. South Willowbrook Associates, LLC shall pay Foster's counsel reasonable attorney's fees, litigation expenses, expert fees, and costs incurred in this action in the amount set forth in the parties' separate Settlement Agreement.

B. Undertakings by Plaintiff Foster: Foster agrees that he is releasing South Willowbrook Associates, LLC. and South Willowbrook Associates, LLC. parent companies, subsidiaries, divisions, affiliates, related companies, predecessors, successors, heirs, executors, administrators, assigns, shareholders, members, managers, directors, officers, employees, agents, attorneys, and lessors of and lessees at the Property from any and all claims, causes, damages, demands, liabilities, equities, and any and all other claims, whether known or unknown, from the beginning of the world to the date of the entry of this Consent Decree and Order. Foster further agrees that the completion of the above-referenced modifications will fully resolve his claims against South Willowbrook Associates, LLC. in the above-captioned matter, and consents to the Court's dismissal of this matter.

C. The parties agree that the modifications and alterations agreed to be made by Defendant at the Property are the only ones that would be considered "readily achievable," which would be achievable to the "maximum extent feasible," or which would otherwise be currently required under the Americans with Disabilities Act, 42 U.S.C. § 12101 et. seq. (as amended effective January 1, 2009) and under Michigan Law.

D. South Willowbrook Associates, LLC. shall pay (or cause to be paid) to Plaintiff the amount set forth in the parties' separate Settlement Agreement, this payment shall be made to

the order of “Leland Foster and Owen Dunn Jr., his attorney” and delivered to Plaintiff’s counsel within the time set forth in the parties’ separate Settlement Agreement. This shall represent full and complete payment for any and all individual claims for damages of Foster, Foster and Foster’s representatives, hereby acknowledge that with respect to Foster’s claims in the matter Leland Foster v. South Willowbrook Associates, LLC they are not entitled to and will not receive any compensatory damages, punitive damages, injunctive relief, or any other form of relief other than the relief expressly provided for in this Consent Decree. Foster and Foster’s counsel affirm that there are no liens, claims or restrictions on their ability to accept such payment, and agree to fully hold harmless and indemnify South Willowbrook Associates, LLC and their management, agents, employees, counsel and insurer against any and all liens or claims made against said settlement payment.

E. Upon completion of the above-listed modifications, the Plaintiff represents to the Court, and represents to the Defendant and all successor owners, that the Property is in compliance with the Americans with Disabilities Act and Michigan law to the extent readily achievable.

F. Jurisdiction: The parties have requested the Court to dismiss the case with prejudice and retain jurisdiction over this case for the sole purpose of enforcing the terms of this Decree and Order and the parties’ separate Settlement Agreement. The Parties further waive any objection on the grounds of lack of personal jurisdiction or venue to the exercise of such jurisdiction now or in the future, but only in connection with the present litigation.

G. Judgment: Based upon the foregoing, the Court finds that this Decree is fair and reasonable, both procedurally and substantively, consistent with applicable law, in good faith, and in the public interest. The Court enters judgment accordingly:

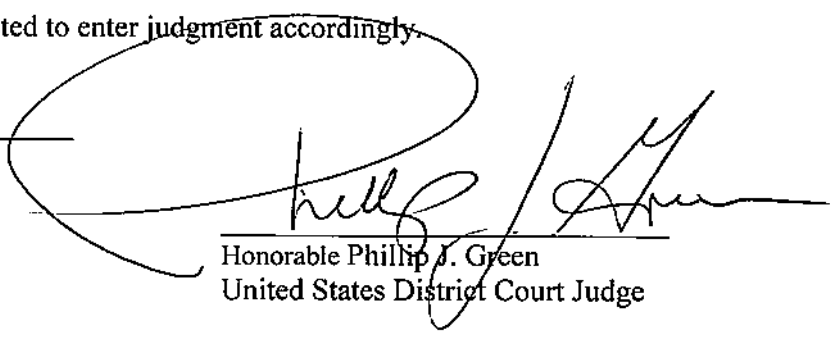
WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that each party be and they are hereby ordered to comply with the terms and conditions of this Decree and Order entered into as a result of the settlement of the Parties.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon completion of the responsibilities set forth in this Decree and Order, that Defendant be and is hereby found to be in compliance with the Americans with Disabilities Act, 42 U.S.C. § 12101 et. seq. and in compliance with Michigan Law as of the date of this Judgment Entry.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that with the concurrence of each of the parties, the jurisdiction of this Court is reserved to enforce the terms and conditions of this Decree and Order, and the parties' separate Settlement Agreement.

The Clerk of Court is directed to enter judgment accordingly.

Dated: 7/24/18



Honorable Phillip J. Green
United States District Court Judge

Approved for entry by:

/s/ Owen B. Dunn, Jr.

Owen B. Dunn, Jr., Counsel for the Plaintiff

/s/ James E. Reed

James E. Reed, Counsel for the Defendant